

R.D. # 0009-01  
Rochelle Park, N.J.

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 22

**HARLEY DAVIDSON OF BERGEN COUNTY, INC.<sup>1</sup>**

Employer

and

**CASE 22-RC-12092**

**LOCAL LODGE 447, DISTRICT LODGE 15,  
INTERNATIONAL ASSOCIATION OF  
MACHINISTS AND AEROSPACE WORKERS, AFL-CIO<sup>2</sup>**

Petitioner

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding,<sup>3</sup> the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction

---

<sup>1</sup> The name of the Employer appears as amended at the hearing.

<sup>2</sup> The name of the Petitioner appears as amended at the hearing.

<sup>3</sup> Briefs filed by the Employer and the Petitioner were duly considered.

herein.<sup>4</sup>

3. The Petitioner, the labor organization involved herein, claims to represent certain employees of the Employer.<sup>5</sup>

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute an appropriate unit for the purpose of collective bargaining within the meaning of Section 9(b) of the Act for the reasons described *infra*:

**All full-time and regular part-time service technicians, helpers, service writers and parts department employees employed by the Employer at its Rochelle Park, New Jersey facility, but excluding all office clerical employees, sales employees, managerial employees, guards and supervisors as defined in the Act.**

The Employer operates a motorcycle dealership in Rochelle Park, New Jersey. The Petitioner seeks to represent a unit made up of a portion of the Employer's service department employees: the service technicians who repair motorcycles. The Employer contends that the only appropriate unit is one which includes the service technicians as well as the balance of the service department employees (service writers and helpers) parts department employees and sales employees. The Employer's unit therefore would include the approximately eight service technicians,

---

<sup>4</sup> The parties stipulated, and I find, that the Employer, a New Jersey corporation, is engaged in the retail sale and service of motorcycles and related products at its Rochelle Park, New Jersey facility, the only facility involved herein.

<sup>5</sup> The parties stipulated, and I find, that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

two helpers, two service writers, eleven parts department employees and two sales employees. Also at issue is the status of Dave Jengo who the Employer, contrary to the Petitioner, contends is a supervisor within the meaning of the Act and, therefore, ineligible.

The Employer's operation is contained in one building, with the different departments separated only by walls and doors. In the service department, shop helpers uncrate motorcycles, clean the service area, bring motorcycles to technicians for repair, assist technicians when repair work necessitates a second person and deliver motorcycles. Service writers schedule repair work, write up repair work orders for the service technicians and interact with the customers. Service technicians repair motorcycles and do the preparation of new motorcycles before they leave the shop. All employees in the service department test drive motorcycles.

Employees in the parts department order parts, pick parts from lists generated by service writers or sales department employees and sell parts and accessories over the counter. One individual, the parts liaison, deals with service technicians who are not sufficiently computer literate to interact with the parts department via computer.

Sales department employees sell and arrange financing of new motorcycles and warranties as well as motorcycle accessories. Sales department employees make sure motorcycles have been test driven, that license plates have been installed and review the motorcycle controls with customers.

The Employer's operation is overseen by a sales/general manager. Sales department employees report directly to the sales/general manager. The parts department has its own manager. The service department had its own manager until

shortly before the hearing of the instant matter. Rather than replace the service manager, the Employer created a new position of foreman/supervisor for Dave Jengo, previously a service technician. Jengo deals solely with the seven other service technicians.

All employees, with slight variations, work from 9:00 a.m. until 6 or 7:00 p.m. Most employees receive a base salary plus a form of commission. Helpers receive only an hourly wage. The major distinguishing characteristic between the service department and sales department wage structure is that service department employees have a larger base salary, while sales employees derive more of their salary from commissions on sales. Parts department employees receive a base salary plus a pooled commission. All employees are covered by the same employee handbook.

Employees in the service department and the parts department interact on a daily basis. Service writers or the service manager assign repair work to service technicians. Once the work order is written, the motorcycle is brought into the service area by a helper, service technician or service writer, although not by a parts or sales department employee. When assistance is required to work on a motorcycle, a service technician will receive such assistance from another service technician, a helper or a service writer. Service technicians are in frequent contact with the parts department liaison, securing and otherwise discussing motorcycle parts. When a service technician has a problem with a particular part, he approaches a service writer or a manager.

Individuals have transferred from service writer to service technician positions, from shop helper to service technician positions and from service

technician to service writer positions. The record reveals that one shop helper works part-time in the parts department and one service writer also works as a service technician, regularly preparing new motorcycles for sale and servicing other motorcycles.

As Petitioner noted at the hearing and in its brief, the Board has found that a distinct and homogeneous group of skilled journeymen craftsmen who, together with helpers or apprentices, are primarily engaged in the performance of tasks which are not performed by other employees and which require the use of substantial craft skills and specialized tools and equipment, constitutes a craft unit. *Burns and Roe Services Corp.*, 313 NLRB 1307, 1308 (1994.) To determine whether a petitioned for group of employees constitutes a valid craft unit, the Board looks at whether the individuals participate in a formal training or apprenticeship program, whether their work is functionally integrated with the work of the excluded employees, whether their duties overlap with the duties of excluded employees, whether the Employer assigns work according to need rather than on craft or jurisdictional lines, and whether the petitioned-for employees share common interests with other employees, including wages benefits and cross-training. *Burns and Roe Services Corp.*, *supra* at 1308. Applying these principles, the Board has held, that automotive mechanics may constitute a craft unit and may be represented in a separate unit for collective bargaining. *Dodge City of Wauwatosa*, 289 NLRB 459 (1986.) The record in the instant matter, however, does not establish that the service technicians in question meet the criteria described above. In this regard, rather than requiring extensive training or experience before being hired by the Employer, here the Employer hired

individuals as service technicians who had limited experience and possessed only rudimentary knowledge of motorcycle mechanics. *J.C. Penny Co., Inc.*, 328 NLRB 766, 767 (1999); *cf.*, *Dodge City of Wauwatosa*, *supra* at 460. Additionally, the Employer has no formal training or apprenticeship program. Indeed, the record discloses that service technicians learned most of their trade through on the job training and through a few short training courses while employed as service technicians. The record indicates that far from possessing the skills of a journeyman craftsman, some of the Employer's service technicians perform low-level repairs due to their limited skills and knowledge. While two or three of the Employer's service technicians are certified in some aspect of motorcycle repair, these certifications are the result of 4 to 5 day training sessions given by the motorcycle manufacturer. These certifications do not equate with certifications involving years' of experience, licenses or long apprenticeships where the Board has found craft units appropriate. See, *Burns and Roe*, *supra* at 1307; *Dodge City of Wauwatosa*, *supra* at 459, *cf.*, *Fletcher Jones Chevrolet*, 300 NLRB 875, 876, (1990) (most of the service technicians were certified to perform their duties). Further, in contrast to the Employer in *Dodge City of Wauwatosa*, *supra*, the Employer in this matter does not require that service technicians take part in continuing education to maintain or improve their skills. *Id.*

In the instant matter, the service technicians share sufficient interests with the other service and parts department employees to require including them in the same unit. In this regard, as opposed to situations where the Board found a craft unit appropriate, service technicians here have daily contact with the helpers, service writers and at least one member of the parts department. *Burns & Roe Services*

*Corp., supra* at 1309. They confer with the service writers regarding work orders and receive assistance from helpers and service writers when repairs call for two people. Everyone in the shop pitches in to move motorcycles from the lot to the showroom and in uncrating new motorcycles. One service writer works on Saturdays as a service technician, performing the same motorcycle repair work as service technicians. One of the helpers splits his time working part-time as a helper and part-time in the parts department. Thus, these employees have sufficient daily contact and interchange to share a community of interest sufficient to be placed in the same unit.

*R. H. Peters Chevrolet, Inc.*, 303 NLRB 791 (1991); *J.C. Penny, supra* at 768.

Additionally, individuals transfer from service writing positions to service technician positions and visa versa. Helpers move up to service technician and service writer positions. Such transfers indicate that these individuals share a sufficient community of interest to be included in the same bargaining unit. *Keller Crescent Co.*, 326 NLRB 1158, 1159 (1998.)

The method of compensating all of the employees described above is similar, as all except for the helpers are paid hourly rates plus some form of commission. *Hotel Services Group, Inc.*, 328 NLRB 116, 117 (1999.) All employees share the same benefits, work in the same physical location and attend common quarterly meetings held by the Employer. *J.C. Penny, supra* at 766. Any slight variation between the individuals' hours of work does not negate their otherwise close community of interest. *J.C. Penny, supra* at 768.

In contrast to the Board's practice of finding service and parts department employees to be appropriately included in the same unit, no such practice exists for

including sales employees. *Gregory Chevrolet*, 258 NLRB 233, 238 (1981); *Graneto-Datsun*, 203 NLRB 550 (1973); *W. R. Shadoff*, 154 NLRB 992 (1965).<sup>6</sup> The record shows that sales department employees do not have the same functions in repairing and servicing motorcycles as the members of the parts and service departments. It is clear both from their job functions as well as their salary structure that, contrary to employees in other departments, sales employees are focused on selling new motorcycles and not servicing and repairing motorcycles already sold. Therefore, I find that the sales department employees are properly excluded from a unit of service and parts department employees.

There remains for consideration the status of Dave Jengo. It is well settled that a party seeking to exclude an individual from a proposed bargaining unit on the basis that the individual is a statutory supervisor has the burden of proving that supervisory status. *Benchmark Mechanical Contractors, Inc.*, 327 NLRB 829 (1999); *Midland Transportation Co.*, 304 NLRB 4 (1991); *Tucson Gas & Electric Co.*, 241 NLRB 181 (1979). Absent detailed, specific evidence of independent judgment, mere inference or conclusionary statements without supporting evidence are insufficient to establish supervisory status. *Quadrex Environmental Co.*, 308 NLRB 101, 102 (1992)(citing *Sears Roebuck & Co.*, 304 NLRB 193 (1991)). Further, whenever evidence is in conflict or otherwise inconclusive on particular indicia of supervisory authority, the Board will find that supervisory status has not been established on the basis of those indicia. *The Door*, 297 NLRB 601 (1990) (quoting *Phelps Community*

---

<sup>6</sup> While the Employer in its brief correctly states that the Board has found units of parts and service department employees appropriate, it argues for inclusion of the sales department employees in the instant matter, and cites no Board precedent for so doing.



*Medical Center*, 295 NLRB 486, 490 (1989)). It is well established that an employee's title, standing alone, is not indicative of supervisory status for purposes of the Act. *John N. Hansen Co.*, 293 NLRB 63 (1989); *Waterbed World*, 286 NLRB 425 (1987). I find that the Employer has not met that burden in the instant matter. The record is devoid of evidence indicating Jengo can hire, fire or discipline employees. The record discloses that Jengo was told by the Employer that if he had a problem with an employee who was not listening, he should report the matter to the general manager and get the manager involved with the situation. Jengo was to assume his position as foreman/supervisor only a few days before the hearing in the instant matter began. The only evidence contained in the record that points towards Jengo's supposed supervisory status was a meeting with the general manager, a few days before the hearing, where the job performance and duties of the service technicians were discussed. The record contained no evidence that this meeting in any way affected the wages or job status of those technicians. When an evaluation does not, by itself, affect the wages and/or job status of employees, the individual performing such an evaluation will not be found to be a statutory supervisor. *Elmhurst Extended Care Facilities, Inc.*, 329 NLRB No 55 (1999). Additionally, the Employer advised Jengo that he is to continue his duties as a service technician on a daily basis. The record lacks any evidence to indicate how much of Jengo's time is to be devoted to his new responsibilities. I find, therefore, that the Employer has failed to meet its burden to establish Jengo's supervisory status. Accordingly, I find that Jengo is employed in the unit and is eligible to vote in the election.

**DIRECTION OF ELECTION<sup>7</sup>**

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to issue subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States Government may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by **Local Lodge 447, District Lodge 15, International Association of Machinists and Aerospace Workers, AFL-CIO.**

---

<sup>7</sup> As the unit found appropriate is larger than that requested, the Petitioner is accorded a period of 14 days in which to submit the requisite showing of interest to support an election. In the event the Petitioner does not wish to proceed to an election it may withdraw its petition without prejudice by notice to the undersigned within seven (7) days from the date of this Decision and Direction of Election. *Folger Coffee*, 250 NLRB 1 (1980).

## **LIST OF VOTERS**

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, two (2) copies of an election eligibility list, by location, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned, who shall make the list available to all parties to the election. *North Macon Health Care Facility*, 315 NLRB 359 (1994). In order to be timely filed, such list must be received in NLRB Region 22, 20 Washington Place, 5<sup>th</sup> Floor, Newark, New Jersey 07102, on or before June 26, 2001. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

## **RIGHT TO REQUEST REVIEW**

Under the provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001. This request must be received by the Board in Washington by July 3, 2001.

Signed at Newark, New Jersey this 19<sup>th</sup> day of June, 2001.

---

J. Michael Lightner  
Acting Regional Director  
NLRB Region 22  
20 Washington Place, 5<sup>th</sup> Floor  
Newark, New Jersey 07102

177-8501  
401-7500  
420-2900  
420-4000  
440-1760-9133